Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, and the Federal-State Joint Board's Public Notice, FCC 04J-02, released August 16, 2004 ("*Harmonization Notice*"),[1] AT&T Corp. ("AT&T") submits these comments relating to the appropriate high-cost universal service support mechanisms for rural carriers that should succeed the five-year plan adopted in the *Rural Task Force Order*.[2] AT&T believes the Commission should *not* move forward with this matter now but rather should focus on the ICF Plan and *ETC/High-Cost Notice* prior to addressing these issues.

INTRODUCTION

On June 28, 2004, the Commission referred this matter to the Joint Board, asking it to make a recommendation regarding the appropriate rural high-cost universal service mechanism that should succeed the five-year plan adopted in the *Rural Task Force Order* and due to end on June 30, 2006.[3] Pursuant to that referral, the Joint Board seeks comment in several areas,

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[1] The *Harmonization Notice* was published at 69 Fed. Reg. 53917 (Sept. 3, 2004).

[2] *Federal-State Joint Board on Universal Service, et al.*, Fourteenth Report and Order, 16 FCC Rcd. 11244, ¶ 27 (2001) ("*Rural Task Force Order*"). AT&T refers to plan adopted therein as "RTF."

[3] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 04-125, ¶ 7 (rel. June 28, 2004).

including: (1) whether a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs would most efficiently and effectively achieve the goals set forth in the Telecommunications Act of 1996; (2) whether the Commission should continue to rely on the definition of "rural telephone company" for high-cost universal service support purposes; (3) whether it would be in the public interest to consolidate multiple study areas within a state; and (4) whether the Commission should retain or modify section 54.305 of its rules, which governs the amount of universal service support for transferred exchanges. *Harmonization Notice* ¶ 1.

Almost two years ago, in commenting on the Joint Board's Recommended Decision responding to the Tenth Circuit's remand in *Qwest Corp.* v. *FCC*, 258 F.3d 1191 (10th Cir. 2001), concerning the methodology of determining high-cost support for *nonrural* carriers, AT&T urged the Commission to move forward with harmonizing rural and nonrural high-cost support mechanisms. Specifically, in comments filed December 20, 2002 (at 18-21), AT&T advocated that rather than continuing to fine-tune the program for nonrural carriers, the Commission should begin the far more important process of harmonizing the support programs for rural and nonrural carriers, given that the Commission has established an interim system of support for rural carriers which will expire in 2006. As the Commission noted in the *Rural Task Force Order* (¶ 8), "we intend to develop over the next few years a long-term universal service plan for rural carriers that is better coordinated with the non-rural mechanism." In particular, the Commission noted that in 1997 it had decided that universal service support must be based on forward-looking economic cost, but that it would permit rural carriers to "shift gradually" to such a mechanism. *Id.* ¶ 4. The interim mechanisms established in the *Rural Task Force Order* are based on embedded costs, but only as an interim measure to permit such a "gradual shift." Accordingly, AT&T urged the Commission to begin the task of developing the permanent support mechanisms for the rural carriers, based on the same principles and features of the program for nonrural carriers, including funding based on forward-looking economic costs.

ARGUMENT

Much has changed since 2002, when AT&T urged the Commission to focus on harmonizing the rural and nonrural high-cost support programs. There are now at least *two* critical matters before the Commission that AT&T believes need to be decided *in advance* of the harmonization docket because they will have a significant impact on how the Commission proceeds with rural carrier support post-RTF. The two proceedings that the Commission should address first are: (1) the comprehensive proposal for Intercarrier Compensation and Universal Service Reform submitted by the Intercarrier Compensation Forum ("ICF")[4] in *ex partes* filed August 13, 2004 and October 5, 2004, and (2) the Commission's *ETC/High-Cost Notice,*[5] released June 8, 2004, concerning the rural high-cost support mechanism and the designation of Eligible Telecommunications Carriers ("ETCs") in areas served by rural carriers. These two proceedings will inevitably shape the harmonization of USF high-cost support.

The key feature of the ICF Plan is that it is a *comprehensive* proposal and would obviate, at least for now, the need to take further steps to harmonize rural and nonrural high-cost support.

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[4] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92.

[5] *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1 (2004) ("*Recommended Decision*"); *see also Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) ("*ETC/High-Cost Notice*").

Among other features, the ICF Plan proposes to reform today's fractured intercarrier compensation rules by restructuring rates, and reducing and unifying terminating compensation, and moving, by 2008, to a uniform intercarrier compensation system that eliminates originating charges and, except in rural areas, intra-network terminating transport charges. Although the Plan will complete the transition to a comprehensive bill-and-keep system, replacing the current inefficient intercarrier compensation mechanism, with rational end-user charges and explicit universal service mechanisms, it has special features to protect rural America. In particular, the Plan ensures that rural carriers will have the option of maintaining a revenue stream when they provide terminating transport services. In addition, the ICF proposal will create for "covered rural carriers"[6] a Transitional Network Recovery Mechanism ("TRNM"), which is a universal service high-cost support mechanism, and which will be fully portable for all non-CMRS ETCs. The ICF Plan recognizes that non-CMRS ETCs (who are generally wireline LECs) in high-cost rural areas are uniquely dependent on access charges for support, and that the transition to bill-and-keep will be more disruptive to these carriers than others. The Plan contemplates that the Commission will re-examine the TNRM eligibility restriction in 2013.

In the *ETC/High-Cost Notice*, the record demonstrates quite clearly that the Commission should, as the Joint Board recommended, take two principal actions to prevent runaway USF growth. *First*, as AT&T showed, the Commission should establish mandatory guidelines that

[6] The ICF Plan defines "covered rural carriers" to exclude all Bell company-affiliated study areas that would receive high-cost support under the ICF Plan's Intercarrier Compensation Recovery Mechanism ("ICRM"), a USF support mechanism that would be portable to both wireline and wireless ETCs. *Ex Parte* Brief of the Intercarrier Compensation Forum in Support of the Intercarrier Compensation and Universal Service Reform Plan, CC Docket No. 01-92, filed October 5, 2004, at 26, & Appendix A at 19.

strictly limit additional rural ETC designations.[7] The threshold question of whether there should be multiple ETCs in rural study areas needs to be addressed via a rigorous public interest cost-benefit analysis, which weighs the potential benefits of multiple ETCs against the incremental cost to the USF. Such quantification is the only way for regulators to demonstrate the public interest of multiple ETCs in rural study areas and overcome the logic that, absent substantial countervailing reasons, competition should lower the cost of providing universal service, not increase it. As part of such a test, to avoid the spiraling growth of the USF, the Commission should set a benchmark of high-cost support per line, above which there would be a rebuttable presumption that a study area served by a rate-of-return regulated incumbent LEC will be limited to one ETC. *Second*, the Commission should limit high-cost support to a single connection to each home or business in rural study areas where multiple ETCs have been determined to be in the public interest. As the Joint Board concluded, this is "more consistent with the goals of section 254 [of the Act] than the present system, and is necessary to preserve the sustainability of the universal service fund." *Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 04J-1, CC Docket No. 96-45, ¶ 56 (2004). It would also "send more appropriate entry signals in rural and high-cost areas, and would be competitively neutral." *Id.*[8] As noted above, the Commission should *not* address rural/nonrural harmonization

[7] *See* AT&T Comments, filed August 6, 2004, at 25-29, and AT&T Reply Comments, filed September 21, 2004, at 2-10, in CC Docket No. 96-45.

[8] The opponents to this latter approach: (1) disregard the fact that mobility is *not* a supported service, (2) incorrectly assume that primary line distribution would apply everywhere when in fact it would apply only in rural study areas with multiple ETCs, and (3) fail to recognize that that only new non-primary lines would not be supported, and the cost of installing such lines is much lower than of installing primary lines. *See* AT&T Reply Comments, filed September 21, 2004, at 7-18, in CC Docket No. 96-45.

until it addresses the ICF Plan and the *ETC/High-Cost Notice*. If adopted, these measures would go a long way toward obviating the need for more drastic changes to the rural high-cost mechanism, such as moving to a forward-looking cost standard or modifying the level of aggregation at which high-cost support is measured.

In the instant proceeding, the Commission has asked the Joint Board to take into account the significant distinctions *among* rural carriers, and *between* rural and nonrural carriers. Although there are many differences between them, one key fact is that rural carriers receive high-cost support based on embedded costs rather than forward-looking costs for nonrural carriers. Another is that there are separate rural programs for *loop* support (High-Cost Loop Support or HCLS), and *switching* support (Local Switching Support or LSS). By contrast, there is one high-cost program for non-rural carriers (High-Cost Model Support or HCMS) that provides support for all of the components of universal service: loop, switching, and transport. The *Rural Task Force Order* dealt primarily only with loop support (HCLS), and the Joint Board asks whether separate loop and switching support mechanisms are necessary. *Harmonization Notice* ¶ 47. This is a matter warranting further consideration, but at a later date.

The *Harmonization Notice* (¶¶ 18-36) focuses on the on the *cost standard* used for determining high-cost support for rural carrierss, whether it should be based on embedded costs or forward-looking costs. As the Joint Board recognizes, the cost standard is but one of the dimensions where rural and nonrural support differs. *Id.* ¶¶ 18-19, 38-47. Another dimension is the *methodology* to be employed. Both loop (HCLS) and switching (LSS) support are determined at the study area level, each using different formulas for measuring support. Now, the Commission has asked the Joint Board to consider aggregating multiple study areas at the holding company level within the state. This would likely result in *less* high-cost support, by taking into account the economies of scale of a service provider with multiple study areas within a given state. By contrast, nonrural support is aggregated at the *state* level (across multiple unaffiliated study areas) primarily because such statewide cost aggregation facilitates the FCC's taking primary responsibility for rate comparability *among* states, with each state commission taking primary responsibility for rate comparability *within* its state. However, because statewide averaging would potentially result in drastic cuts in high-cost support for rural carriers, it may result in major dislocations in support. This is but one of many thorny issues that the Commission need not now address.

In short, AT&T believes that the Commission should *not* devote its resources at this time to resolving the issues raised in the *Harmonization Notice*, but should instead proceed to consider the ICF Plan, which is a comprehensive proposal that, if adopted, would provide sustainable revenues and high-cost support for rural carriers. To be sure, by eliminating most forms of intercarrier compensation, the ICF Plan will require *additional* USF support to keep end-user charges at reasonable levels.

Accordingly, the ICF Plan revises the USF contribution mechanism from the current unsustainable revenue-based methodology to a numbers-based approach. As the Commission is well aware, there is substantial instability and tremendous pressure on the size of the USF at present. The revenue assessment base continues to decline, driven by the substitution of wireless for wireline long distance, the growth of non-telecommunications long distance substitutes such as e-mail and instant messaging, and the "leakage" created as higher and higher contribution factors induce customers and their providers to structure contracts that bundle interstate telecommunications services with intrastate services, information services, and customer premises equipment to minimize the revenue attributed to interstate telecommunications services.[9] The interstate retail revenue base is declining, and therefore the Commission has had to use unspent School and Libraries money to limit the increase in the contribution factor on several occasions, including the third and fourth quarters of 2004.[10] The ICF Plan contains a rationale assessment mechanism, namely, a numbers-based solution, which the Commission should adopt *before* it entertains anything that might result in extraordinary increases to rural high-cost support. In addition, by adopting a stringent public interest test to limit most rural study areas to one ETC, or limiting support to the primary line in study areas with multiple ETCs, the Commission will have gone a long way toward mitigating growth in rural high-cost support.

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[9] *See generally* Comments of Coalition for Sustainable Universal Service, filed April 22, 2002, CC Docket Nos. 96-45, *et al.*

[10] *See, e.g.,* Public Notice, *Proposed Fourth Quarter 2004 Universal Service Contribution Factor*, DA 04-2976, at 2 n.7 (rel. Sept. 16, 2004), and Public Notice, *Proposed Third Quarter 2004 Universal Service Contribution Factor*, DA 04-1613, at 1-2 & n.7 (rel. June 7, 2004).

CONCLUSION

For these reasons, the Commission should hold off its planned detailed review of post-RTF high-cost support at this time. Instead, it should focus its resources on the comprehensive ICF Plan for intercarrier compensation reform, which includes a rural high-cost program and reforms the USF contribution methodology, as well as the *ETC/High-Cost Notice* prior to addressing the issue of rural/nonrural harmonization.

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CERTIFICATE OF SERVICE

I, Judy Sello, hereby certify that, on October 15, 2004, I have caused true and correct copies of this document to be filed and served electronically on the following:

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